

DEC 1 5 2008

FEDERAL ELECTION COMMISSION

999 E Street, N.W.
Washington, D.C. 20463

FIRST GENERAL COUNSEL'S REPORT

MUR: 6031

DATE COMPLAINT FILED: 6/26/08

DATE OF NOTIFICATION: 7/01/08

LAST RESPONSE RECEIVED: 8/06/08

DATE ACTIVATED: 9/16/08

STATUTE OF LIMITATIONS: 10/01/12-
4/01/13

COMPLAINANT:

Chris McClure, Executive Director,
North Carolina Republican Party

RESPONDENTS:

Hagan Senate Committee, Inc. and Nancy
M. Bremmer, in her official capacity as
treasurer¹

**RELEVANT STATUTES
AND REGULATIONS:**

2 U.S.C. § 431(13)

2 U.S.C. § 434(a)

2 U.S.C. § 434(b)

2 U.S.C. § 441a(f)

11 C.F.R. § 102.9

11 C.F.R. § 104.5

11 C.F.R. § 104.7

11 C.F.R. § 110.1

INTERNAL REPORTS CHECKED:

Disclosure Reports

RAD Referral Materials

RAD Requests for Additional Information

FEDERAL AGENCIES CHECKED:

None

I. INTRODUCTION

This matter originated with a complaint filed with the Commission alleging that

Hagan Senate Committee, Inc. and Nancy M. Bremmer, in her official capacity as

¹ Linda S. Cary was the treasurer of the Committee at the time of the activity at issue. Nancy M. Bremmer became treasurer of the Committee on August 25, 2008. There is no information to suggest that Ms. Cary should be named in her personal capacity as treasurer in this matter.

1 treasurer, (the "Committee") violated the Federal Election Campaign Act of 1971, as
2 amended, ("the Act") when it received and improperly disclosed 97 excessive
3 contributions totaling \$184,531.31 in its 2007 Year End Report and 2008 Pre-Primary
4 Report.² In addition, Complainant alleges that the Committee failed to timely disclose
5 five contributions of \$1,000 or more subject to 48-hour reporting and failed to fully
6 disclose required contributor information for over 370 contributions in its Year End and
7 Pre-Primary Reports. In its response, the Committee asserts that it did not receive
8 excessive contributions and offered information to support the presumptive reattribution
9 and redesignation of most of the disputed contributions. The Committee acknowledged
10 untimely disclosing three contributions subject to 48-hour reporting and provided
11 information assertedly showing that it used "best efforts" to comply with the disclosure
12 requirements of the Act.

15 After a review of the available information, we recommend that the Commission
16 exercise its prosecutorial discretion and dismiss the allegation that Hagan Senate
17 Committee, Inc. and Nancy M. Bremmer, in her official capacity as treasurer, violated
18 2 U.S.C. § 441a(f) by accepting excessive contributions, and dismiss with admonishment
19 the allegations that Hagan Senate Committee, Inc. and Nancy M. Bremmer, in her official
20 capacity as treasurer, violated 2 U.S.C. §§ 434(a) and 434(b) by failing to timely disclose
21 contributions by 48-hour reporting and by failing to disclose identifying information for
22 contributors.

² The complaint references 97 excessive contributions but provides specific information as to 94 contributions.

II. FACTUAL AND LEGAL ANALYSIS

A. Disclosure of Contributor Information and the Committee's Best Efforts

The Act requires candidate committees to identify persons who make contributions that when aggregated exceed \$200 for the election cycle.

2 U.S.C. § 434(b)(3)(A). The Act and Commission regulations define "identification" to include the individuals name, address, occupation, and name of employer.

2 U.S.C. § 431(13); 11 C.F.R. § 100.12. All written solicitations must include a clear request for the required information. 11 C.F.R. § 104.7. In its answer to the complaint, the Committee asserts a "best efforts" defense, maintaining that it complied with all of the requirements of 11 C.F.R. § 104.7(b) to attempt to obtain identifying information, including contacting the contributor within 30 days of receipt of the contribution and reviewing previous contributor information. In order to demonstrate "best efforts," the committee treasurer must make at least one effort to obtain the information no later than 30 days after the receipt of the contribution. *Id.* The request may not include new material on any other subject and cannot include an additional solicitation. *Id.* The request must clearly ask for the missing information; and if in writing, it must be accompanied by a pre-addressed return post card or envelope. *Id.* If the treasurer shows that best efforts have been used to obtain the information, any reports submitted by the committee will be considered in compliance with the Act. 2 U.S.C. § 432(i).

The Committee is the principal campaign committee for Kay Hagan, a candidate for the U.S. Senate from North Carolina in the 2008 election. The first report filed by the Committee was the 2007 Year End filed on January 31, 2008. In that report, the

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1 Committee disclosed 468 individual contributions on Schedule A, but failed to provide
2 complete contributor information for 169, or 36%, of the contributions. In the next report
3 filed, the 2008 Pre-Primary Report, the Committee disclosed 1150 contributions from
4 individuals on Schedule A, but failed to provide complete contributor information for
5 219, or 19%, of the contributions.

6 RAD sent the Committee a request for additional information ("RFAI") for the
7 2007 Year End Report requesting that the Committee update the incomplete contributor
8 information on the report and/or provide a detailed description of its "best efforts" to
9 obtain the information. See 2 U.S.C. § 434(b)(3)(A); 11 C.F.R. § 104.7(b). The
10 Committee timely responded but failed to provide documentation of its efforts to obtain
11 complete contributor information. On May 2, 2008, the Committee filed an amended
12 2007 Year End Report updating the identification information for 19 contributors, thus
13 reducing the incomplete contributor information for the 2007 Year End Report to 150, or
14 32%, of the contributions.

15 The Committee's 2008 July Quarterly Report, filed after the complaint, disclosed
16 1688 individual contributions. RAD's preliminary review determined that the Committee
17 did not disclose contributor information or demonstrate "best efforts" for 19 of those
18 entries, or 1% of the total individual contributions.

19 In response to the complaint, the Committee maintains that it complied with the
20 requirements of 11 C.F.R. § 104.7(b) in attempting to obtain the required contributor
21 information. In support of its assertion, the Committee provided partial records to
22 support its actions, including copies of three different types of donor cards which requests
23 all identifying information required by the Act. Two of the cards included the

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1 recommended language of 11 C.F.R. § 104.7(b)(1) informing contributors that Federal
2 law requires "best efforts" to collect the identifying information for contributions
3 exceeding \$200 in an election cycle. The Committee provided sample follow-up letters
4 sent to contributors (although without documentation of the required pre-addressed
5 postcard or envelope for a response), and phone logs. The letter requested the missing
6 information and informed the contributor that Federal law requires the Committee to
7 obtain the information.

8 Although the Committee failed to disclose the required identifying information
9 and did not demonstrate "best efforts" for a significant number of contributors, its
10 response to the complaint indicates that it is taking actions consistent with the "best
11 efforts" safe harbor, such as requesting contributor identification information in its
12 solicitation materials, sending a thank you letter that includes a follow-up request for
13 missing contributor identification within the appropriate time frame, and, when
14 necessary, contacting contributors by telephone while maintaining phone logs. In
15 addition, the Committee's improved efforts are visible in the decline in its failure rate in
16 the Year End Report (36%), the Pre-Primary (19%) and the July Quarterly (1%). This
17 Committee's actions are distinguishable from MUR 5957 (Sekhon), a matter recently
18 considered by the Commission. RAD referred the Committee to Elect Sekhon to the
19 Office of General Counsel for failing to provide name, employer and/or occupation
20 information for 89% of the contributions disclosed in several reports and failing to
21 establish that it used best efforts to obtain that information, and the Commission found
22 reason to believe that the Sekhon Committee violated 2 U.S.C. § 434(b).

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Further, it does not appear that the Committee will be subject to a RAD referral to OGC or the Alternative Dispute Resolution Office ("ADRO") for its failure to disclose identifying information for contributors.

Accordingly,

this Office recommends that the Commission dismiss with admonishment the allegation that the Hagan Senate Committee, Inc. and Nancy M. Bremmer, in her official capacity as treasurer, violated 2 U.S.C. § 434(b) by failing to disclose identifying information for contributors.

B. Alleged Excessive Contributions

The Act prohibits any person from making or knowingly accepting contributions in excess of the Act's contributions limits. *See* 2 U.S.C. §§ 441a(a) and 441a(f). The individual contribution limit on giving to candidate committees is \$2,300 per election. 2 U.S.C. § 441a(a)(1)(A). Upon receipt of an excessive contribution, a committee must

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1 remedy the violation by refunding the excessive amount or seeking redesignation or
2 reattribution within 60 days. 11 C.F.R. § 110.1(b)(5)(ii) and (k)(3). The Commission's
3 regulations allow a committee to presumptively redesignate an excessive portion of a
4 contribution to the general election provided the contribution is made before the general
5 election, is not designated to another person, and does not result in the contributor
6 exceeding the contribution limit. 11 C.F.R. § 110.1(b)(5)(ii)(B)(1)-(4). The contributor
7 can reattribute a contribution, or the committee can do so presumptively. The contributor
8 can instruct a committee in writing to attribute an excessive portion of a joint contribution
9 to another individual. 11 C.F.R. § 110.1(k)(3)(i). The committee can make a
10 presumptive reattribution of an excessive contribution in the name of the other individual
11 listed on the check provided this does not cause the individual to exceed the contribution
12 limits. 11 C.F.R. § 110.1(k)(3)(ii)(B)(1). A committee treasurer must notify a contributor
13 of the redesignation or reattribution within 60 days of the receipt of the contribution and
14 must offer the option of a refund.

15 The complaint alleged the Committee accepted and improperly disclosed
16 excessive contributions totaling \$184,531.31. The complaint based this allegation on the
17 Committee's disclosure of individual contributors giving \$2,300 for the primary and
18 \$2,300 for the general elections, assuming it unlikely that all of these contributions were
19 received in the form of separate \$2,300 checks. The complaint concluded that the
20 Committee had not properly redesignated or reattributed contributions made in the form
21 of single checks. In response to the complaint, the Committee asserts that it complied
22 with the requirements of 11 C.F.R. § 110.1 to properly designate individual contributions
23 received for the primary and general elections. To demonstrate its compliance, the

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1 Committee outlined its internal review process for the subject reports. According to the
2 Committee, the contributions disclosed in the Reports were handled by three means: the
3 contribution was originally designated by the contributor, contributing spouses made
4 donations by separate checks, or the contribution was presumptively reattributed or
5 redesignated per the Commission's regulations. Response at 2. The Committee provided
6 samples of contributor cards distributed at campaign events wherein the contributor
7 signed and allocated the funds between the primary and general election. In addition, the
8 Committee provided copies of contributions made by spouses through separate checks.
9 In further support, the Committee also attached to its response examples of its contributor
10 cards, phone logs, and letters to contributors to advise that their contribution was
11 presumptively reattributed or redesignated and offering to refund the excessive amount.

12 The Committee acknowledges that it does not possess documentation to support
13 the presumptive reattribution or redesignation for 15 of the 94 allegedly excessive
14 contributions itemized in the complaint. The aggregate value of these contributions is
15 \$30,800. The Committee maintains that its behavior conformed to the regulations and
16 that these few instances were the result of contributions for which an oral confirmation of
17 the reattribution/redesignation was obtained without a follow-up letter or a copy of the
18 letter could not be located. Response at 2.

19 In view of the speculative nature of the allegation that the Committee accepted
20 and misreported excessive contributions, the Committee's response indicating that most
21 of the contributions were properly redesignated and reattributed as necessary, _____

22 _____
23 _____, we recommend that the Commission dismiss the allegation that Hagan

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Senate Committee, Inc. and Nancy M. Bremmer, in her official capacity as treasurer,
violated 2 U.S.C. § 441a(f) by accepting excessive contributions.

C. 48-Hour Notices

The Act requires principal campaign committees of candidates to notify in writing
either the Secretary of Senate, the Commission, or Secretary of State, as appropriate, of
each contribution of \$1,000 or more is received by any authorized committee of the
candidate after the 20th day, but more than 48 hours, before the day of the election.
2 U.S.C. § 434(a)(6)(A). The Act further requires notification to be made within 48
hours after the receipt of the contribution and to include the name of the candidate and
office sought by the candidate, the identification of the contributor, and the date of receipt
and amount of the contribution. *Id.*

The complaint alleged that the Committee did not timely disclose by 48 hour
notice five contributions totaling \$6,000 during April 2008. One \$1,000 contribution
received on April 17 (Thursday) and one \$1,000 contribution and one \$2,000 contribution
received on April 18 (Friday) should have been reported April 19 (Saturday) and April 20
(Sunday), respectively. Instead, they were reported on April 21 (Monday). The
Committee acknowledged that these contributions were untimely reported.
Response at 3. Respondents mistakenly concluded that if a due date fell on a weekend,
the report was due on the next business day. *Id.*

By contrast, the Committee maintains that two other \$1,000 contributions
identified in the complaint were timely reported by 48-hour notice on April 27, 2008.
The Committee asserts that although it disclosed April 24 as the date of receipt, these
contributions were received by a joint fundraising committee on April 24 but not

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distributed to the Committee until April 25. Although the Committee did not disclose these two contributions by 48-hour notice within two days of receipt, the Committee did report its share of the net proceeds received as a transfer-in from the fundraising representative. The transfers were appropriately noted on the July Quarterly Report as a Memo Schedule A to FEC Form 3. See 11 C.F.R § 102.17(c)(8)(i)(B).

In view of the *de minimis* amount in violation here—\$4,000—

and the fact that the 48-hour notices were filed within two days of the required date and well before the May 6, 2008 primary, we recommend that the Commission dismiss with admonishment the allegation that Hagan Senate Committee, Inc. and Nancy M. Bremmer, in her official capacity as treasurer, violated 2 U.S.C. § 434(a) by failing to file timely 48-hour notices.

III. RECOMMENDATIONS

1. Dismiss the allegation that Hagan Senate Committee, Inc. and Nancy M. Bremmer, in her official capacity as treasurer, violated 2 U.S.C. § 434(b) by failing to disclose identifying information for contributors, and send an admonishment letter to them.
2. Dismiss the allegation that Hagan Senate Committee, Inc. and Nancy M. Bremmer, in her official capacity as treasurer, violated 2 U.S.C. § 441a(f) by accepting excessive contributions.
3. Dismiss with admonishment the allegation that Hagan Senate Committee, Inc. and Nancy M. Bremmer, in her official capacity as treasurer, violated 2 U.S.C. § 434(a) by failing to timely disclose contributions by 48-hour reporting, and send an admonishment letter to them.
4. Approve the attached Factual and Legal Analysis.

5. Approve the appropriate letters.

Thomasenia P. Duncan
General Counsel

Ann Marie Terzaken
Associate General Counsel for
Enforcement

12/15/08
Date

BY: Mark Allen
Mark Allen
Acting Assistant General Counsel

Shana M. Broussard
Shana M. Broussard
Attorney